



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2010

Mr. Fortunato G. Paredes  
Escamilla, Poneck & Cruz, L.L.P.  
For United Independent School District  
216 West Village Boulevard, Suite 202  
Laredo, Texas 78041

OR2010-10426

Dear Mr. Paredes:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 386568.

The United Independent School District (the "district"), which you represent, received a request for the requestor's client's personnel file, including a specified evaluation and information related to a specified investigation. You state that the district has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential, such as section 611.002 of the Health and Safety Code. Section 611.002 governs the public availability of mental health records and provides in part:

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.
- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that is made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, .0045; Open Records Decision No. 565 (1990). These

sections permit disclosure of mental health records to a patient, a person authorized to act on the patient's behalf, or a person who has written consent of the patient. Health & Safety Code §§ 611.004, .0045. The information in Exhibit D is confidential under section 611.002 of the Health and Safety Code and may only be released in accordance with sections 611.004 and 611.0045.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code. Section 21.355 provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that for the purposes of section 21.355, the word "teacher" means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. You state that the employee to whom the submitted information pertains is a teacher who holds a teaching certificate under chapter 21 of the Education Code. Based on this representation and our review of the information at issue, we conclude that most of the information in Exhibit C is generally confidential under section 21.355 of the Education Code. However, we conclude that the self-report forms written by the named teacher do not evaluate the employee for purposes of section 21.355. Further, section 21.352(c) of the Education Code provides, however, that "[e]ach teacher is entitled to receive a written copy of the evaluation on its completion." Educ. Code § 21.352(c); *see id.* § 21.352(a) (prescribing appraisal process and performance criteria each school district shall use). In this instance, the requestor is an attorney for the teacher to whom the information at issue pertains. Therefore, to the extent this information consists of evaluations of the type that are contemplated by section 21.352, the requestor has a right of access under section 21.352(c), and any such information must be released to this requestor. To the extent the requestor does not have a right of access under section 21.352(c), the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.102(b) of the Government Code excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]" Gov't Code § 552.102(b). We agree that the transcripts submitted as Exhibit B fall within the scope of section 552.102(b). We note, however, that this exception protects personal privacy. Thus, the requestor, as an attorney for the employee whose transcripts are at issue, has a right of access to the transcripts under section 552.023 of the Government Code.<sup>1</sup> *See id.* § 552.023. Therefore, Exhibit B may not be withheld from this

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<sup>1</sup>Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

requestor under section 552.102(b) of the Government Code and must be released. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

In summary, the information in Exhibit D is confidential under section 611.002 of the Health and Safety Code and may only be released in accordance with sections 611.004 and 611.0045. To the extent the information we have marked consists of evaluations of the type that are contemplated by section 21.352, the requestor has a right of access under section 21.352(c), and any such information must be released to this requestor. To the extent the requestor does not have a right of access under section 21.352(c), the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 386568

Enc. Submitted documents

c: Requestor  
(w/o enclosures)